

decreed the appeal. It is urged in appeal before us that the Judge Mr. Barstow's decision on the question of tenancy and liability for rent is final. This objection is valid. It was no doubt irregular for Mr. Barstow to remand the case for re-decision under s. 562, but his judgment disposed of the issue between the parties whether or not defendant Chattar was liable to pay rent to plaintiff on the holding, and it only left open for determination the amount of that rent after deduction of defendant's share of profits due to him by the plaintiff. It was not in Mr. Knox's power to re-open and decide again the question of liability for rent, nor can we say that Mr. Barstow's decision that Chattar and Kamta, although share-holders, took this land with liability to pay rent on it to the body of share-holders represented by the lambardar is wrong or open to any objection which may be entertained in second appeal. The case will go back in order that the Judge may determine whether the amount now decreed by the Assistant Collector is correct. Ten days will be allowed for objections and a day be fixed for hearing by the Registrar.

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 SURAJ D  
 v.  
 CHATTAR

*Issue remitted.*

*Before Mr. Justice Oldfield and Mr. Justice Straight.*

MAINATH KUARI (JUDGMENT-DEBTOR) v. DEBI BAKHSH RAI  
 (DECREE-HOLDER.)\*

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 April 20

*Execution of decree—Limitation—Application by decree-holder for postponement of sale—Application for execution, or to take some step in aid of execution, of decree—Act XV of 1877 (Limitation Act), sch. ii, No. 179.*

An application by a decree-holder for the postponement of a sale in execution of the decree on the ground that he had allowed the judgment-debtor time is not "an application according to law to the proper Court for execution, or to take some step in aid of execution, of the decree," within the meaning of No. 179, sch. ii, Act XV of 1877, and limitation cannot be computed from the date of such an application.

THE decree-holder in this case applied for execution of his decree on the 19th July, 1876. In pursuance of this application certain property belonging to the judgment-debtor was attached and was notified to be sold on the 21st August, 1876. On the day fixed for the sale to take place the decree-holder applied to

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\* Second Appeal, No. 7 of 1881, from an order of W. Kaye, Esq., Judge of Gorakhpur, dated the 10th November, 1880, reversing an order of Maulvi Muhammad Kamil, Munsif of Basti, dated the 14th April, 1880.

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MAJNATH  
KUMARI  
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SHI BAKHSH  
RAJ.

the Court executing the decree to postpone the sale, stating that he had agreed with the judgment-debtor to give him time to raise the amount of the decree. This application was granted, and the execution-case was struck off the file. On the 21st August, 1879, the decree-holder made the next, the present, application for execution of his decree. The Court of first instance held that the application was barred by limitation. On appeal by the decree-holder the lower appellate Court held that the application was within time, having been made within three years from the date of the decree-holder's application of the 21st August, 1876, which the lower appellate Court held was an application in aid of execution within the meaning of No. 179, sch. ii. of Act XV of 1877. The judgment-debtor appealed to the High Court, contending that the decree-holder's application of the 21st August, 1876, was not one in aid of execution, and consequently limitation could not be computed from the date of that application, and the present application was barred by limitation.

*Munshi Sukh Ram* and *Maulvi Mehdi Hasan*, for the appellant.

*Mir Zahur Husain* and *Babu Sital Prasad Chatterji*, for the respondent.

The judgment of the Court (OLDFIELD, J. and STRAIGHT, J.) was delivered by

OLDFIELD, J.—The application of the 21st August, 1876, was an application by the decree-holder that the sale fixed for that day might be postponed as he had given the judgment-debtor time. This cannot be held to be “an application according to law to the proper Court for execution, or to take some step in aid of execution, of the decree,” within the meaning of No. 179, sch. ii, Act XV of 1877. It was an application made with the object of staying execution, and it has been held by this Court that an application of this nature is not an application to enforce or keep in force the decree, within the meaning of art 167, sch. ii, Act IX of 1871.—*Fakir Muhammad v. Ghulam Husain* (1). The order of the Judge is set aside, and that of the Munsif is restored, and this appeal is decreed with costs.

*Appeal allowed.*